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IN THE

Supreme Court of the United States

October Term, 1979
No. 79-1491

JOSEPH H. SEYMOUR, C. WILLIAM BURKE, RICHARD L. CORBIT, *et al.*,

(Complete Title on Inside Cover)

Petitioners,

vs.

COUGHLIN COMPANY, a California corporation,

Respondent.

PETITION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONERS
AND
BRIEF OF AMICUS CURIAE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION NO. 12.

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Petitioners,

vs.

COUGHLIN COMPANY, a California corporation,

Respondent.

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PETITION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONERS.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

International Union of Operating Engineers, Local Union No. 12 ("Local 12") applies for leave to file with the Court the attached brief as amicus curiae in support of the petitioners, on the following grounds:

1. Local 12 is the labor organization with whom respondent Coughlin Company executed the "short form" collective bargaining agreement which was in dispute before, and interpreted by the United States Court of Appeals for the Ninth Circuit.

in Southern California and Southern Nevada, many

2. Local 12 has approximately 5,000 short form agreements with employers, and represents approximately 25,000 workers in the construction industry of whose livelihoods will be affected by a ruling in

the questions presented by the petitioners, in that the enforceability of the short form agreement may depend upon the Ninth Circuit's ruling.

3. Counsel for Local 12 has examined the pleadings, the relevant statutes and the briefs, and is familiar with the issues involved in this case and the scope of their presentation.

4. Local 12 shall argue in its brief that the decision of the Court of Appeals may cause widespread labor strife and have a detrimental economic effect in the construction industry. Local 12 shall argue that for these reasons, and because the decision is contrary to federal labor law, certiorari should be granted.

5. Good cause exists for the late filing of Local 12's brief in that Local 12 was not a party to the underlying litigation or the appeal, and learned only through the recent receipt of a copy of the Petition for a Writ of Certiorari that the Petition was being filed.

WHEREFORE, Local 12 respectfully requests permission to file the attached brief as amicus curiae in support of the petitioners.

Respectfully submitted,

JULIUS REICH and
ALEXANDER B. CVITAN, Members of
REICH, ADELL, CROST & PERRY,
A Professional Law Corporation,

By JULIUS REICH,

Attorneys for International Union of Operating Engineers, Local Union No. 12, Applicant for Leave to File Amicus Curiae Brief.

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BRIEF OF AMICUS CURIAE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION NO. 12.

Reasons for Granting the Petition.

The subject of the Court of Appeals' decision involves an important question of law with which this Court has never directly dealt; namely, whether a collective bargaining agreement may automatically expire by its own terms without the advance written notice required by Section 8(d) of the National Labor Relations Act, 29 U.S.C. §158(d).

Because of the substantial impact of the decision on hundreds of thousands of workers whose terms and conditions of employment are governed by "short form" collective bargaining agreements, certiorari should be granted to settle the important issues of law presented by this case.

ARGUMENT.

THE HOLDING OF THE COURT OF APPEALS THAT A COLLECTIVE BARGAINING AGREEMENT MAY EXPIRE BY ITS OWN TERMS, WITHOUT PRIOR WRITTEN NOTICE, IS CONTRARY TO SECTION 8(d) OF THE NATIONAL LABOR RELATIONS ACT AND MAY CAUSE WIDESPREAD LABOR UNREST.

1. The Decision of the Court of Appeals May Establish a Precedent Followed by Parties Throughout the Country.

International Union of Operating Engineers, Local Union No. 12 ("Local 12") has executed short form collective bargaining agreements with approximately 5,000 employers who are engaged in the construction industry in Southern California and Southern Nevada. By incorporating the terms of master labor agreements which were negotiated between Local 12 and various employer associations, these short form agreements establish the wages, hours and other terms and conditions of employment for over 25,000 workers.

Throughout the construction industry parties to these agreements have long understood that unless 60 days prior written notice is given, they are bound not only to the master labor agreement in effect at the time of execution of the short form agreement, but to each master labor agreement "as recognized, modified and renewed from time to time." This intent and common understanding is reflected in prior decisions of the Court of Appeals for the Ninth Circuit. *See, e.g., Seymour v. Hull & Moreland Engineering,* 605 F.2d 1105, 1108 (9th Cir. 1979); *Waggoner v. C & D Pipeline Co.,* 601 F.2d 456, 457 (9th Cir. 1979). Respondent Coughlin Company is the first employer to offer a contrary interpretation.

Short form agreements are by no means unique to Local 12. Indeed, the practice of entering into similar agreements in the construction industry extends nationwide. *See, e.g., International Union of Operating Eng'rs, Local 150 v. Flair Builders, Inc.,* 406 U.S. 487, 488, 92 S.Ct. 1710, 1711 (1972); *Ted Hicks & Associates, Inc. v. NLRB,* 572 F.2d 1024, 1026 (5th Cir. 1978); *Bugher v. Southland Fabricators & Erectors, Inc.,* 452 F. Supp. 870, 872 (W.D. La. 1978); *Construction & General Laborers Union, Local 1140 v. Sheesley-Winter Construction Joint Venture,* 421 F. Supp. 137, 138 (D. Neb. 1976).

Because of the widespread use of short form agreements, the decision of the Court of Appeals is significant to other parties than those immediately affected. Nor is its effect limited to the construction industry within the jurisdiction of the Ninth Circuit. Rather, for *any* Court of Appeals to hold, as the Court of Appeals for the Ninth Circuit has done here, that an employer's contractual obligations terminate without prior written notice, and that such termination is given retroactive effect, will create chaos where the parties believed they had negotiated labor peace.

2. The Decision of the Court of Appeals May Create Labor Unrest in the Construction Industry.

The decision of the Court of Appeals is that once the initial master labor agreement is modified, the short form agreements expire without notice. Even where the employer acts in compliance with the terms of the renewed or modified master labor agreement by making proper trust fund contributions on behalf

of employees, the agreement is still considered to have expired on the date of the renewal or modification.[1]

This concept flies in the face of Section 8(d) of the National Labor Relations Act, 29 U.S.C. §158(d). *See Allied Chemical & Alkali Workers, Local 1 v. Pittsburgh Plate Glass Co.,* 404 U.S. 157, 187, 92 S.Ct. 383, 401-02 (1971) ("the party desiring . . . termination is required to serve written notice on the other party, offer to meet and confer, notify mediation and conciliation agencies if necessary, and meanwhile maintain contract relations").[2] Moreover, it conflicts with the national labor policy in favor of industrial peace. As this Court stated in *Pittsburgh Plate,*

> "[t]he conditions for . . . termination set out in [Section 8(d)] plainly are designed to regulate . . . terminations so as to facilitate agreement in place of economic warfare." *Ibid.*

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[1]Incredibly, in the view of the Court of Appeals such conduct in conformance with successive master labor agreements does not even raise an issue of triable fact relevant to the parties' intent. For this reason alone, Local 12 submits that the Court should grant certiorari to review the decision.

[2]The Court of Appeals' ruling that Section 8(d) was not timely raised before the District Court is incorrect. First, the District Court itself refused to make such a finding. Second, according to the local rules governing procedure in the District Court, the argument was timely raised. *See* Rule 7 of the United States District Court for the Central District of California which provides in part: "If objections to form *or substance* [of findings of fact and conclusions of law] are served and filed . . . the court may thereafter require counsel to appear for a hearing thereon or may sign the [findings of fact and conclusions of law] as prepared or as modified" (emphasis added). The petitioners did file timely objections *to the substance* of the District's Court tentative findings. If it had determined a need for a further hearing, the District Court could have requested argument from respondent. However, its failure to do so is certainly not a reflection on the timeliness of petitioners' arguments.

Far from furthering the goal of industrial peace, the decision of the Court of Appeals may have opened a Pandora's box, Local 12, once assured of relatively peaceful labor relations, is now uncertain of the status of 5,000 collective bargaining agreements and the terms and condition of employment of over 25,000 workers it represents. Other unions which have negotiated similar language in their short form agreements face this same uncertainty. Indeed, the relationships of countless employers and unions, and the status of their past and present contractual obligations, may now be in doubt. These doubts can be resolved by this Court now or they may be the subject of multitudinous litigation before the courts and the National Labor Relations Board in the future.

Also placed in jeopardy is the status of trust fund contributions made pursuant to those short form agreements which, under the Court of Appeals' view, expired long ago. These contributions would have been paid without the benefit of the statutorily required written collective bargaining agreement. *See* 29 U.S.C. §186 (c)(5)(B); *Walsh v. Schlecht,* 429 U.S. 401, 407, 97 S.Ct. 679, 684 (1977). Thus, the payment of fringe benefits to beneficiaries may be diminished and in some cases denied. *See Moglia v. Geoghegan,* 403 F.2d 110, 116 (2d Cir. 1968), *cert. denied,* 394 U.S. 919 (1969) (widow denied pension trust benefits where there was no collective bargaining agreement between contributing employer and union). Demands for reimbursement of the contributions, as well as claims by employees for fringe benefits to which they thought they were entitled, may be the cause of additional litigation.

This uncertainty and potential disruption in collective bargaining relationships exists simply because the Court of Appeals refused to apply Section 8(d) of the National Labor Relations Act, 29 U.S.C. §158(d). Furthermore, it exists because the Court of Appeals refused to adhere to the fundamental legal principle that summary judgment may not be granted where there is raised a triable issue of fact.

Conclusion.

For all these reasons, the petition for certiorari should be granted.

Respectfully submitted,

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A Professional Law Corporation,
By JULIUS REICH,
Attorneys for International Union of Operating Engineers Local Union No. 12.